

Persons who rent tangible personal property to others incur a Use Tax liability based on their cost price of items purchased for their rental inventories. The only exception is the rentor of automobiles under lease terms of one year or less. 86 Ill. Adm. Code 130.2010(b). (This is a GIL.)

March 15, 2001

Dear Xxxxx:

This letter is in response to your letter dated February 12, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY is expanding its business to your state and would like to receive information concerning the taxation of our products and services.

COMPANY arranges shipping and storage solutions for school students. Primarily, the company organizes the pick-up, summer storage and fall campus delivery of student possessions. If the student isn't returning to the school, COMPANY will also arrange for shipment of the possessions. The company also rents refrigerators during the school year.

The following is a complete list of products and services the company currently sells:

- Pickup, storage, and delivery of student items
- Pick-up and shipping of student items
- Packing boxes and packing materials
- Insurance coverage against damage or loss of items
- Rental of small refrigerators

Note that, for the first two services listed above, the COMPANY charges its customers a single, all-inclusive rate for the service. For example, we charge \$35 for the pick-up, summer storage, and fall delivery of a standard sized box.

Also note that we engage professional moving and shipping companies to perform the actual moving, shipping, and storage services.

Finally, we will be accepting customer deposits to be applied against the final bill.

We have taken the steps to register in your state but require your opinion as to the applicability of sales taxes to the sale of these products and services. We plan on commencing sales in early March.

If you require additional information, you can contact me.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101, enclosed. Because certain aspects of your business (specifically the pickup, storage, delivery, and insuring student items) do not involve the sale of tangible personal property, no Retailers' Occupation Tax applies to such activity. However, any retail sale of boxes and packing material constitutes the sale of tangible personal property and the gross receipts from these sales are taxable under the Retailers' Occupation Tax Act.

86 Ill. Adm. Code 130.2010(b) states that persons who rent or lease the use of tangible personal property to others under true leases are not liable for Retailers' Occupation Tax. A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See, 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See, 86 Ill. Adm. Code 150.310(a)(3).

Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:
Jerilynn T. Gorden
Senior Counsel – Sales and Excise Taxes

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